IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 257 of 1985

and

INCOME TAX REFERENCE No 257-A of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

DEEPAK NITRITE LTD.

AppeaMrance:

MR BB NAIK FOR MR MANISH R BHATT for Petitioner

MMR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following two questions have been referred to this court for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench 'B' under the provisions of sec. 256(1) of the Income-tax Act, 1961 which are arising out of its order passed in I.T.A. No. 1155 and 1212/Ahd/1983 dated 7.10.1985.

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that the roads inside the factory should be treated as the part of building and depreciation be allowed on the same?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that the assessee was entitled for the deduction of the full amount of Rs. 1,74,747/incurred towards initial contribution of approved superannuation fund u/s 36(1)(iv) of the I.T. Act and not on 80% of the contribution as per condition imposed by the Board in its notification So 3433 dated 21.10.1965?

2. Learned advocate Shri B.B. Naik has appeared for the applicant revenue whereas learned advocate Shri J.P. Shah has appeared for the respondent assessee.

3. The learned advocates have fairly submitted that both the questions have been now concluded. So far as the first question is concerned, it has been covered by the judgment delivered in the case of CIT v. Gwalior Rayon Silk Mfg. Co. Ltd., 196 ITR 149. It has been held in the said case that the roads inside the factory building should be treated as part of the building and depreciation should be allowed thereon accordingly. Thus, the first question is replied in the affirmative i.e. against the assessee and in favour of the revenue.

4. So far as the second question is concerned, it has also been answered by the Hon'ble Supreme Court in case of CIT v. Sirpur Paper Mills, 237 ITR 41. Looking to the law laid down in the said case, the said question is answered in the affirmative i.e. against the revenue and in favour of the assessee.

Thus, the said reference is disposed of accordingly with no order as to to costs.

5. The Tribunal has also referred to this court under the provisions of sec. 256(1) of the Act the following two questions of law for its opinion. The said questions arise out of I.T.A. No. 911/Ahd/1983. The said reference should be treated as a separate reference and the Registry is directed to number the same as I.T.R. No. 257-A of 1985. The said questions are as under :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that the foreign tour expenses incurred on the travelling of Managing Director and some of the executives was an allowable revenue expenditure?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that commission paid to the whole time director and Managing director was not covered u/s 40(c) of the I.T. Act?

6. The learned advocates appearing for the parties have submitted that the said two questions have already been answered by this Court during the pendency of the reference.

7. So far as the first question is concerned, in the case of the assessee itself, for the earlier assessment year, the said question has been answered in the negative i.e. in favour of the revenue and against the assessee. In the circumstances, the first question is also answered accordingly i.e. against the assessee and in favour of the revenue.

8. So far as the second question is concerned, it has been decided by this Court in the case of CIT v. Rohit Mills Ltd., 219 ITR 228. The said question has been decided in the negative i.e. against the assessee and in favour of the revenue and therefore we answer the second question in the negative i.e. against the assessee and in favour of the revenue.

9. Thus, all the four questions are answered accordingly and the references are disposed of with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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